

Decision 03-04-037

April 3, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carol Fisch,

Complainant,

v.

Garrapata Water Company, Inc.,

Defendant.

Case 00-03-017  
(Filed March 9, 2000)

**ORDER DENYING REHEARING OF DECISION 02-10-042**

**I. SUMMARY**

This order denies the application for rehearing of Decision (“D”.) 02-10-042 (“the Decision”) filed by Carol Fisch (“Applicant”) which alleges that the Decision commits error by including two mistakes in its findings of fact that should be corrected. The applicant claimed that those errors could have important consequences concerning her property rights and those of her successors with respect to the water line that serves her land.

In the Decision, we granted the petition for modification of D.01-04-013 filed by the applicant, in part, and modified Findings of Fact Nos. 13 and 18 of that decision to more accurately reflect the record. Our Decision noted that the modifications did not materially affect our principal holding that the applicant and Garrapata Water Company, Inc. (“Garrapata”) should share, equally, the costs of repairs to the water service line that serves her property. (Decision, at p.4.) The petition for modification was denied in all other respects.

## II. DISCUSSION

The applicant brought a complaint against Garrapata on March 9, 2000 (Case 00-03-017) for resolution of two issues concerning the water service line that serves her residential property along Highway One near Big Sur, California. The first issue was whether her property was within the service area of Garrapata, a small privately owned and operated residential water system. The second issue involved determining which party was responsible for the maintenance of the main water pipe serving her house, which drops from the applicant's property down a steep cliff to Garrapata Creek and then back up the other side.

In D.01-04-013, we found that the applicant's property is within Garrapata's service area and described the water service line that spans Garrapata Creek to serve that property as essentially "a jerrybuilt nonstandard affair that does not comply with the Tariff Rule 15 main extension requirements contained within Tariff Rule 16." (Decision, at p. 2.) We assigned, in D.01-04-013, responsibility for outstanding and future repairs to the water service line equally between the applicant and Garrapata.

The applicant filed a petition for modification of D.01-04-013 on April 9, 2002. The only specific relief requested in the petition was a modification of Finding of Fact 13 of D.01-04-013.<sup>1</sup> We subsequently found, in the Decision, that Finding of Fact 13 was erroneous and corrected it, along with Finding of Fact 18, which reiterated Finding of Fact 13.<sup>2</sup>

On November 19, 2002, the applicant filed an application for rehearing of the Decision. The application first contends that, although the

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<sup>1</sup> Finding 13 states: "Approximately one half of the water line is located on Fisch's property (to the mid-point of Garrapata Creek); the rest is located on property Fisch does not own."

<sup>2</sup> Finding 13 was modified as follows: "Approximately one half of the water line, *north of the midpoint of Garrapata Creek*, is located on Fisch's property *or adjacent to Fisch's property*; the rest is located on property *south of the midpoint of Garrapata Creek* that Fisch does not own." (Italics indicate changes.)

Commission acted on her petition for modification to correct Finding of Fact 13, “the Commission still did not get it right.” The applicant alleges that the Decision’s modification of Finding of Fact 13 in D.01-04-013 was insufficient since it incorrectly holds that the bottom of Garrapata Creek marks the approximate midpoint of the water service line, suggesting that half the water service line is on the applicant’s property. She requests that the Decision again be modified to state that only 200 out of 900 feet of the water service line in question is on her property, while the remaining 700 feet is not on her property. Secondly, the applicant asks that the Decision be modified to reflect Garrapata’s belief that it owns an easement for the water service line southward from the midpoint of Garrapata Creek.

The applicant is first requesting that we provide a more precisely adjudication of her property rights with regard to the water service line at issue. She contends that failure to provide a clearer description of those rights may have important consequences for her and her successors. However, we do not have jurisdiction equivalent to that of a court, to adjudicate incidents of title. Camp Meeker Water System, Inc. v. Public Utilities Com. (1990) 51 Cal.3d 845. We would be bound by a judicial ruling in a quiet title action brought by any person claiming an interest in the subject property who believes the Commission ruling clouds his or her title. (Code Civ. Proc., Sec. 760.010 et seq.)

In the legitimate exercise of our regulatory authority, we have construed the evidence relating to the location and history of the water service line in order to provide certainty to the parties regarding the status of service to the applicant’s property and responsibility for repair of the water service line. We have done so for the purpose of ascertaining facts relevant to the merits of the proceeding and not for the purpose of resolving disputes concerning property rights between parties. If the applicant wants a specific adjudication of her property rights, she should file a quiet title action in civil court.

The only question involving the property rights of the water service line in issue that applicant can now properly present before us is whether the evidence supports our description of the location of the water service line, and our decision, based on that description, to hold that the applicant and the water company should share, equally, the costs of repairs to that water line that serves her property.

The applicant concedes, on page 3 of the application, that she does not dispute the legality of the Decision's findings, stating: "Ms. Fisch does not dispute the final resolution and decision." The applicant thus does not dispute our Decision's determination that the modifications made to Finding of Fact 13 do not materially affect the Decision's primary holding that she and Garrapata should share, equally, the costs of repairs to the water service line that serves her property. The applicant has therefore failed to show that our Decision is unlawful. The application for rehearing is therefore denied for failure to show legal error in our Decision's findings on the material issues addressed in this matter, as is required by Public Utilities ("PU") Code section 1732<sup>3</sup> and Rule 86.1 of the Commission's Rules of Practice and Procedure.<sup>4</sup>

Even assuming that the applicant's issues were properly raised before us, her claim that we committed factual error by not providing a more exact property description of the water service line has no merit. The basis for her allegation of factual error in the Decision's findings is that they "... do not accurately reflect uncontradicted evidence developed in the course of the proceedings." (Emphasis added.) However, contrary to her claim, the evidence did not support a finding that provides a precise description of her property rights with regard to the water service line. The testimony related to property rights and water

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<sup>3</sup> PU Code section 1732 states: "The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful..."

<sup>4</sup> Rule 86.1 states, in part: "Applications for rehearing shall set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous."

line boundaries in this case involved estimates and approximations due to the lack of reliable evidence. The applicant acknowledges this when she refers to “the nonstandard nature of the water line” and “the lack of reliable evidence as to the history of the water line.” (Application, at p. 3.) Due to those concerns, the Decision’s intent was to provide a best approximation, consistent with the record evidence. Finally, we note that since the Commission does not have the necessary jurisdiction to adjudicate property rights, it would be error to grant rehearing for the purpose of obtaining evidence on the issue of exactly how much of the water service line falls on the applicant’s property.

The second issue presented in the application for rehearing is a request that our Decision be modified to reflect Garrapata’s belief that it owns an easement for the water service line southward from the midpoint of Garrapata Creek. This issue is outside the scope of the application for rehearing. The veracity of Garrapata’s belief that it owns an easement for the water service line southward from the midpoint of Garrapata Creek was not an issue addressed in the Decision. The only specific relief requested in the petition for modification that led to the Decision was a modification of Finding of Fact 13. (Decision, Finding of Fact 1.) Therefore, this is not the proper time to raise this easement issue. The proper time to raise it was in an application for rehearing of D.01-04-013. Having not raised it then, the applicant is barred from raising it now.<sup>5</sup> Even if the request had been timely, the applicant has failed to satisfy the requirement in PU Code section 1732 that she show how this issue demonstrates legal error in the Decision.

### **III. CONCLUSION**

The application for rehearing of the Decision filed by applicant, Carol Fisch, is denied since it has not demonstrated legal error.

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<sup>5</sup> PU Code section 1731(b) established a jurisdictional requirement that an application for rehearing of a Commission decision must be filed within 30 days of the issuance of the decision.

**IT IS ORDERED** that:

1. Carol Fisch's application for rehearing of D.02-10-042 is denied.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

SUSAN P. KENNEDY

Commissioners

Commissioner GEOFFREY F. BROWN  
being necessarily absent, did not  
participate